IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12446 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRITHVISINH MAHENDRASINH JHALA - Petitioner(s)

Versus

GHATLODIYA NAGARPALIKA & 2 - Respondent(s)

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Appearance :
MR GR THAKKER for Petitioner
MR VAKIL for Respondent No(s).: 1.
MR DIPEN DESAI, AGP for Respondent No(s).: 2, 3.
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CORAM :HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date : 07/07/2005

ORAL JUDGMENT

1) RULE. Mr.Vakil, learned advocate waives service of notice of rule on behalf of respondent No.1 and Mr.Dipen Desai, learned AGP, waives service of notice of rule on behalf of respondent Nos.2 and 3. With the consent of the

parties, matter is taken up for final hearing today.

2) By filing this petition, the petitioner has challenged the order passed by the Director of Municipalities on 11th April, 2005, by which the Director of Municipalities has not condoned the delay in filing appeal. The petitioner has preferred an appeal under Section 48 of the Gujarat Municipalities Act, challenging the order of the Ghatlodiya Nagar Palika, however, there was a delay of about six months in preferring such appeal, therefore, the petitioner requested the Director of Municipalities to condone the delay.

3) Mr.Thaker, learned advocate for the petitioner submitted that since the petitioner was making representations to the Nagar Palika and since his father was sick, there was a delay in filing appeal and the Director of Municipalities should have condoned such delay and he should have decide the appeal on its merits.

4) Mr.Dipen Desai, learned AGP, for respondents No.2 and 3 as well as Mr.Vakil, learned advocate appearing for respondent No.1 submitted that since the appeal was not preferred within a period of one month, the Director of Municipalities was justified in not condoning the delay because he has no powers are to condone the delay.

5) It is true that such appeal is required to be

preferred within a period of one month as per the provisions of Section 48 (5) of the Municipalities Act and the Director of Municipalities may not have any power to entertain the same, however, considering the fact that the order which is under challenge is an order of removal, in my view, the Director of Municipalities may decide the appeal on its own merits instead of throwing it away on the technical ground of delay. Considering the submission of learned advocate Mr.Thaker that for genuine reasons the petitioner was unable to approach the authority within time, in my view, the Director of Municipalities should decide the appeal of the petitioner on merits, treating the same as if it is filed within a period of one month as per the provisions of Section 48 (5) of the Gujarat Municipalities Act. It is clarified that on merits of the issue, this Court has not expressed any opinion as this Court is of the opinion that instead of rejecting the appeal of the petitioner on the ground of delay, the same is required to be dealt with on merits. In that view of the matter, it is not necessary to examine the merits of the order of Nagar Palika as ultimately, the Director of Municipalities is required to examine the merits of the case.

6) Accordingly, by setting aside the impugned order, the matter is sent back to the Director of Municipalities to decide the appeal of the petitioner on merits. The Director of Municipalities is directed to examine the merits of the matter and decide the appeal as expeditiously as possible and preferably within a period

of six months from today.

7) Accordingly, this petition is allowed. Rule is made absolute. No costs.

8) Direct service is permitted.

(P.B.MAJMUDAR, J.)

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